future, and not to any document as existing. And for this reason, that the language of the will was of a future character, Sir J. P. Wilde refused, in *Goods of Mary Reid*,[1] to give effect to a paper prepared after the will, though it was apparently sufficiently described in the will and was followed by a good codicil. But in most cases the rule of *Goods of Truro* would probably lead to the same result as the test here suggested.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — IMPLIED POWER — EXTRINSIC FACT. — Where an agent has authority to borrow money on exceptional terms in cases of emergency, the lender is not bound to inquire whether the emergency has actually arisen; but if he acted in good faith and without notice that the agent has exceeded his authority, he can recover from the principal. *Montaignac* v. *Shitta*, 15 App. Cas. 357 (Eng.).

The principle of this case would seem to be that where the agent is empowered to act on the existence of an extrinsic fact the principal is bound by the agent's representation as to the existence of that fact when it is peculiarly within the agent's knowledge. If so the case would be contrary to *Grant* v. *Norway*, 10 C. B. 665, and in accord with *N. Y. & N. H. R. R. v. Schuyler*, 34 N. Y. 30.

BILLS AND NOTES — PAROL EVIDENCE. — Parol evidence is admissible to show that a demand promissory note made by a daughter to her father was in fact executed under an agreement that it should never be enforced, but should serve as a mere memorandum of an advancement. *Brook* v. *Latimer*, 24 Pac. Rep. 946 (Kan.).

CONSPIRACY — MALICE. — An action will lie for a combination or conspiracy to drive a trader out of business by fraudulent and malicious acts. The gravamen of a civil action is malice, conspiracy being matter of inducement only. *Van Horn* v. *Van Horn et. al.*, 20 Atl. Rep. 485 (N. J.).

Mogul Steamship Co. v. *McGregor*, 23 Q. B. D. 598, was cited and approved.

CONSTITUTIONAL LAW — EQUAL PROTECTION. — The allowance of the right of appeal to citizens of the State at large in all cases of conviction of crimes before a justice of the peace, and a denial of such right to citizens of Detroit, convicted of similar offences in the police court of that city, where the sentence imposed does not exceed twenty days imprisonment or a $25 fine, does not deprive citizens of Detroit of the equal protection of the laws guaranteed to all citizens of the United States by the Constitution, Amendment 14, § 1, as the act providing for appeals from the police court of Detroit operates equally on all persons within its jurisdiction. *Sullivan* v. *Hang*, 46 N. W. Rep. 795 (Mich.).

CONSTITUTIONAL LAW — POLICE POWER — INTOXICATING LIQUORS. — A San Francisco ordinance provided that one seeking a liquor-dealer's license must first obtain the written consent of a majority of the police commissioners, and in case of a refusal in the first instance, such consent was to be given upon the written recommendation of not less than twelve citizens owning real estate in the block in which the business was to be carried on. *Held*, the ordinance was constitutional. *Crowley* v. *Christensen*, 11 Sup. Ct. Rep. 13. See note on this case *supra*, p. 236.

CONTRACTS — INTERPRETATION — CHARTER-PARTY. — By the charter-party the charterer contracted to pay demurrage for delays over and above the lay-days allowed, and the owner agreed to render all customary assistance in unloading. The lay-days were exceeded on account of a strike by the dock laborers employed

[1] 38 L.J. N. S. (P. & M.) 1; 4 Gray's Cas. Prop. 223.

by the stevedores of both parties. The jury, on this evidence, found that the shipowners were not "ready and willing to do their part of that which it was customary for them to do." *Held*, that nevertheless the shipowner was entitled to demurrage. The obligation of the consignee to pay demurrage is absolute. The readiness and willingness of the master to do his part is not a condition precedent or concurrent. The consignee is liable unless he was prevented from unloading by the act of the master. *Budgett & Co.* v. *Binnington & Co.*, 39 W. R. 13 (Eng.).

CORPORATIONS — RESIGNATION OF DIRECTOR. — Where the charter contains nothing in regard to the resignation of directors, they contract to serve until their resignation is accepted by the company, and cannot be free from their office merely by tendering their resignation. *It seems* also that the board of directors, with general power to manage the company's affairs, have no implied power to accept such resignation. *Municipal Land Co.* v. *Pollington*, 63 L. T. Rep. N. S. 238 (Eng.).

CRIMINAL LAW — CONSTRUCTION OF STATUTES. — The selling liquor to a minor on his representation that it is needed for his sick mother's immediate use, but without a written order, though within the letter, is not within the spirit, of Pen. Code Tex. art. 376, which makes it a misdemeanor for any person to knowingly sell liquor to a minor without the written consent of his parent or guardian. *Waldstien* v. *State*, 14 S. W. Rep. 394 (Tex.).

CRIMINAL LAW — EVIDENCE OF ACCOMPLICES. — It is a general rule of practice to advise a jury not to convict on the uncorroborated testimony of an accomplice, but it is not error to refuse to do so. *Com.* v. *Wilson*, 25 N. E. Rep. 16 (Mass.).

EQUITY JURISDICTION — STATUTE OF LIMITATIONS — FRAUD. — A plaintiff sues in equity because he is barred at law, and claims that he is barred at law by reason of having failed to bring suit in time, and that his failure to bring suit in time was caused by the fraudulent conduct of defendants. *Held*, that, as the fraud charged is collateral to the plaintiff's cause of action (contract) and not the foundation of the suit, equity will afford no relief. *Jaffrey* v. *Bear*, 42 Fed. Rep. 571.

INSOLVENCY — ASSETS — ALABAMA CLAIMS. — The assignee of one who made an assignment in bankruptcy before 1871 is not entitled to the sum paid the assignor for "war premiums" out of the residue of the Geneva Award. Such claims were expressly excluded from the award by the commissioners, therefore it cannot be said that at the time of his assignment the assignor had any right against Great Britain or the United States. *Tajt* v. *Marsily*, 24 N. E. Rep. 926 (N. Y.).

INSOLVENCY — FRAUDULENT CONVEYANCES. — Where one of the terms of the sale of his business by an insolvent debtor is that he is retained in the management thereof at a salary, there is a benefit secured to him which renders the transaction fraudulent as against creditors. *Stephens* v. *Reginstein et al.*, 8 So. Rep. 68 (Ala.).

LIBEL — CRIMINAL PROSECUTION. — The following false words were published by a newspaper: "It is now almost forgotten that Governor Haney pardoned his own brother out of the penitentiary." *Held*, that they constituted a libel for which a criminal prosecution could be maintained. It is enough in a criminal action that the alleged libellous words were directed against a family. *State* v. *Brady*, 24 Pac. Rep. 948 (Kan.).

LIEN — INNKEEPER — MARRIED WOMAN'S SEPARATE PROPERTY. — Where a husband and wife stay together at a hotel, and the husband is the sole contracting party to whom credit is given, the separate property of the wife is not liable for the unpaid balance of the hotel charges; but the innkeeper has his lien on the wife's goods and luggage, because he was as much compelled to receive them as the husband's goods. *Gordon* v. *Silber*, 25 Q. B. D. 491 (Eng.).

LOSS OF CONSORTIUM. — A wife cannot maintain an action against another woman for debauching her husband. *Doe* v. *Roe*, 20 Atl. Rep. 82 (Me.).

A similar decision was reached lately in Wisconsin (45 N. W. Rep. 523). But see *Westlake* v. *Westlake*, 34 Ohio St. 621, and *Lynch* v. *Knight*, 9 H. of L. Cas. 577, *contra*.

MEASURE OF DAMAGES. — In an action against a town for injuries resulting

from a defective highway, it appeared that the plaintiff, after having so far recovered from h s injuries (a broken leg) as to be able to be about on crutches, had his leg broken a second time by an accident to a carriage in which he was riding. The court instructed the jury that if there was no negligence on the part of the plaintiff contributing to the second accident, and if the injury would not have occurred except for the weakened and impaired condition of his leg resulting from the previous accident, in contemplation of law the second breaking would be a direct consequence and result of the previous accident, for which the plaintiff could recover damages. *Held*, that the instructions were correct. *Weiting* v. *Millston*, 46 N. W. Rep. 879 (Wis.).

PROPERTY — APPORTIONMENT — INCOME. — The X. Company divided a portion of a reserve fund created by setting aside from time to time a portion of the current profits. *Held*, that, as between tenant for life and remainder-man under a settlement, this must be considered income, although a portion of the fund came from profits earned and set aside in the testator's lifetime. *In re Alsbury*, 45 Ch. D. 237 (Eng.).

This case follows *Bouch* v. *Sproule*, 12 App. Cas. 385, which, in deciding that a given payment was capital, laid down the principle that a reserve fund like this was either capital or income. as the company chose to treat it. Previous to this case the authorities were conflicting, and there was an impression that such a fund was capital.

QUASI CONTRACTS — SUPPORT OF PAUPER. — The plaintiff furnished a pauper with necessaries which the defendant was legally bound to provide. The defendant had already been notified by the plaintiff of the destitute state of the pauper. *Held*, that the plaintiff could recover from the defendant on the ground of an implied promise to pay for the necessaries supplied. *Eckman* v. *Township of Brady*, 45 N. W. Rep. 502 (Mich.).

REAL PROPERTY — COVENANTS RUNNING WITH THE LAND. — The owner of land covenanted to give the covenantee one-eighth of the lead ore mined by him on his land. *Held*, that the parties were tenants in common of all the ore in the land, and that the covenant was binding upon the devisee of the covenantor. *Crawford* v. *Witherbee*, 46 N. W. Rep. 545 (Wis.). The conclusion reached in this case, that the burden of the covenant would run, was right; but it would seem that the reasoning of the court was erroneous. If it were true that the parties became tenants in common, the covenant would not run. But if upon a true construction of the deed the covenantee simply obtained a right of profit in the land, the decision would be correct; for, according to the American authorities, a covenant in aid of a profit will bind the assignee of the covenan or. See *Morse* v. *Aldrich*, 19 Pick. 449.

REAL PROPERTY — ESTOPPEL. — An heir-apparent conveyed the land of her ancestor by a warranty deed, and died in the lifetime of her ancestor, leaving children. *Held*, that on the death of the ancestor the land would go to the children, and would not pass to the grantee by estoppel. The children take the land as heir of the ancestor, and not of the grantor. *Habig* v. *Dodge*, 25 N. E. Rep. 182 (Ind.).

REAL PROPERTY — POSSESSION OF TENANT — NOTICE TO VENDEE. — The possession of land by a tenant is sufficient notice of the landlord's title under an unrecorded deed to put a purchaser on inquiry. *Levy* v. *Holberg*, 7 So. Rep. 431 (Miss.).

REPLEVIN — DEPRECIATION PENDING APPEAL. — The plaintiff brought replevin for bonds which the defendant, by giving security, retained in his possession during the trial. The plaintiff got judgment for the bonds and, under a provision of the code, for the depreciation up to the date of the judgment. The defendant appealed and the judgment was affirmed. This action was brought to recover the loss due to depreciation between the date of the judgment and the final affirmance. *Held*, the action would not lie. *Corn Exchange Bank* v. *Blye*, 25 N. E. Rep. 208 (N. Y.).

SALES — WARRANTY. — Vendor of a horse gave a written warranty that the horse was registered in the Stud Book of England. *Held*, in an action for the failure of this warranty, that the seller could not show, by parol evidence, that prior to the sale he had informed the purchaser that the horse was not registered. *Watson* v. *Roode*, 46 N. W. Rep. 491 (Neb.).

SLANDER — WORDS ACTIONABLE PER SE. — A Catholic priest told his congregation that the plaintiff, a physician, had been excommunicated; that therefore they should not employ him; and if they did they could not have the ministrations of the priest while he was under their roof. *Held*, that the words were actionable *per se*, as they affected the plaintiff in his capacity as a physician. *Morasse* v. *Brochu*, 25 N. E. Rep. 74 (Mass.).

STATUTE OF LIMITATIONS — OFFSETTING DEBTS AGAINST LEGACIES. — The debts due testator by legatees cannot be set off against legacies, if the period of limitation has run before time of distribution.

The allowance of a dividend on the debts, by the debtors' assignee, for benefit of creditors, does not arrest the statute after it has begun to run, for the assignee is not the agent of the debtor. *In re Light's Estate*, 20 Atl. Rep. 536 (Pa.).

TRUSTS — CHARITABLE BEQUEST — CERTAINTY. — A bequest as follows: "And the rest, if there be any, [I give] to such charitable purposes as my said trustee may deem best," — is sufficiently definite, and will be carried into effect. *Powell* v. *Hatch*, 14 S. W. Rep. 49 (Mo.).

TRUSTS — STATUTE OF LIMITATIONS. — Where one having stock standing in his name sells it to another, and gives a receipt for the money, reciting that it is the first instalment on a certain number of shares of the stock, "standing in my name, but owned by him, and he remaining responsible for the balance of the instalments when called in," but containing no agreement as to the future disposition of the stock or the dividends therefrom, the transaction raises an implied trust against which the Statute of Limitations will run. *Cone et al.* v. *Dunham*, 20 Atl. Rep. 311 (Conn.).

WILLS — CONSTRUCTION. — Where a will creates a valid trust and names a trustee, the trustee takes the legal title to the trust estate although there are no word of gifts to him. *Toronto Co.* v. *R. Co.*, 25 N. E. Rep. 198 (N. Y.).

WILLS — CONSTRUCTION. — In the draft of the will the word "including" on page 1 was changed at the testator's direction to "excluding." In the copy which the testator executed the word "including" on page 1 was left standing, and "including" on page 12 changed to "excluding." *Held*, that "excluding" on page 12 could be altered back, but that no alteration could be made on page 1. *Goods of Huddleston*, 63 L. T. Rep. N. S. 255 (Eng.).

This decision, it would seem, can only be supported on the theory of dependent relative revocation. This case seems an extreme application even of that doctrine. It was, however, an uncontested case.

WILLS — CONSTRUCTION. — A testator gave an annuity to A., and from and immediately after her death to such child or children of hers as should attain twenty-one. But if A. died "without leaving any such child," he gave the annuity to others. A. died without leaving any children, but had had a child who attained twenty-one in her lifetime. *Held*, that the representatives of the deceased child take nothing. Where there has been a vested interest in a capital sum, the court has construed "leaving" as if written "having had," to avoid taking away that vested interest. But an annuity is a personal provision, and this doctrine has never been applied to it. *In re Hemingway*, 63 L. T. Rep. N. S. 218 (Eng.).

WILLS — CONSTRUCTION — REMAINDERS. — Testator divised his residuary estate to trustees "during the life of my son D.," in trust for said D., and "after the death of said D. I give and bequeath all the property affected by the above trust to my own right heirs." *Held*, that an estate in remainder vested on testator's death in D., his only heir, so that on D.'s death the estate went to his heirs, and not to those who were then the testator's heirs. *In re Kenyon et. al.*, 20 Atl. Rep. 294 (R. I.).

REVIEWS.

THE VETO POWER: ITS ORIGIN, DEVELOPMENT, AND FUNCTION IN THE GOVERNMENT OF THE UNITED STATES. By Edward Campbell Mason. Edited by Professor Albert Bushnell Hart. Boston, 1890: Ginn & Co. 8vo. Pages 230.